

Citation for published version:

Macdonald, GS 2016, 'Domestic violence and private family court proceedings: Promoting child welfare or promoting contact?', *Violence Against Women*, vol. 22, no. 7, pp. 832-852.
<https://doi.org/10.1177/1077801215612600>

DOI:

[10.1177/1077801215612600](https://doi.org/10.1177/1077801215612600)

Publication date:

2016

Document Version

Peer reviewed version

[Link to publication](#)

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**“DOMESTIC VIOLENCE AND PRIVATE FAMILY COURT
PROCEEDINGS: PROMOTING CHILD WELFARE OR PROMOTING
CONTACT?”**

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KEYWORDS

Domestic violence; child contact; child welfare; Cafcass; family court proceedings.

ABSTRACT

Despite improved understanding regarding domestic violence, child welfare and child contact, and related policy developments, problems persist regarding how the family courts deal with fathers' violence in contested contact/ residence cases. In the study reported here, analysis was undertaken of welfare reports prepared for the courts in such cases in order to investigate how and to what extent issues of domestic violence and children's perspectives on these issues were taken into account when making recommendations to the courts. Analysis found that despite evidence of domestic violence and child welfare concerns, contact with fathers was viewed as desirable and inevitable in the vast majority of cases.

INTRODUCTION

Awareness of domestic violence as a child welfare concern has grown significantly in recent years, resulting in changes to policy and practice in the UK and other countries. The risks for children - physically, emotionally, psychologically and developmentally - associated with exposure to domestic violence are well established, both in relation to the links between domestic violence and child abuse (for example, Bowker et al., 1988, Farmer and Owen, 1995; Hester and Pearson, 1998; Stark and Flitcraft, 1988) and the detrimental impacts of being witness to, or aware of, one parent's violence against another (for example, Abrahams, 1994; Edleson, 1999; Harold and Howarth, 2004; Holden et. al., 1998; Jaffe et al., 1990; Wolfe et al. 2003). The potential risk of harm for children exposed to domestic violence has been recognised in statute in England and Wales by section 120 of the Adoption and Children Act 2002 which extends the definition of 'significant harm' (Children Act 1989 s.31) to include 'impairment suffered from seeing or hearing the ill-treatment of another'. This came into force in January 2005. Since then children's social care departments have received an increased number of police notifications of domestic violence incidents (Stanley et al., 2010).¹

It is also increasingly recognised that where there has been domestic violence risks of harm to women and children do not necessarily diminish with the ending of the parents' relationship. Domestic violence may start or escalate at the point of separation and/or post-separation (Abrahams, 1994; Hester and Radford, 1996; Humphreys and Thiara, 2003; Richards, 2003) and the post-separation period can be a time of acute danger for women and children, where risk of homicide increases (Wilson and Daly, 2002).

Child contact with the domestic violence perpetrator has in particular been highlighted as the potential site of further abuse and violence to both women and children where risk of serious harm is heightened (Anderson, 1997; Hester and Radford, 1996; Radford et al., 1999; Walby and Allen, 2004). Furthermore, serious case reviews of child deaths in England and Wales have consistently highlighted domestic violence as an important feature in these cases (Brandon et al., 2009; Reder et al., 1993; Reder and Duncan, 1999; Rose and Barnes, 2008; Sinclair and Bullock, 2002). Similarly, Saunder's (2004) review of 29 child homicides resulting from contact/residence arrangements in England and Wales between 1994 and 2004 found that there had been clear evidence of domestic violence in eleven of the thirteen families and that contact had been court ordered in five cases.

In English and Welsh law disputes over children following parental separation are dealt with in private family law proceedings under Part II of the Children Act 1989. Parents who are in disagreement over post-separation arrangements concerning their children can apply to the court for an order under Section 8 of the Act, usually in relation to residence and/or contact. It should be noted that the majority of separating couples make private arrangements for their children without recourse to court involvement. Less than 10% of separating couples seek the assistance of the court in making arrangements for their children post-separation (Blackwell and Dawe, 2003; Lader, 2008). Ordinarily in private law, if a case cannot be resolved through dispute resolution services and the court requires more information regarding the welfare of a child, the Judge will request a welfare report under Section 7 of the Children Act 1989 (s7 report). A s7 report is normally undertaken by a Children and Family Court Advisory and Support Service (Cafcass) Family Court Advisor (FCA), known as a Children and Family Reporter (CFR) in private law cases.² In general, the report

should consider the disputed issues, the options available to the court and, where feasible, make a recommendation to the court concerning future action, including consideration of whether an order should be made. In such cases, the CFR has a statutory duty to have regard to the welfare checklist set out in s 1(3) of the Children Act 1989.³ This is a legal list the CFR and the court must take into consideration when determining any question regarding a child's upbringing. The child's welfare must always be the court's paramount consideration when making decisions in relation to a child's upbringing under the Children Act 1989.

Criticisms of family justice system responses to child contact in domestic violence cases have been persistently made by specialist women's support services. These critiques are well supported by a substantial body of empirical research, starting with key studies such as Anderson (1997), Hester and Radford (1996), Hester et al. (1997) and Radford et al. (1999). Government consultation on the matter was issued in 1999 as a result of these concerns (CASC, 1999). The resultant government report (CASC, 2000) coincided with an important Court of Appeal case *Re LVMH* in which the Court ruled that where it is identified as an issue domestic violence must be taken seriously as a risk factor in disputed child contact cases.⁴ The judgement was informed by the CASC report and by expert advice provided by consultant child psychiatrists Sturge and Glaser (2000).⁵ As a result of the Court of Appeal Judgement, the experts' report and the CASC report, guidelines were produced for the courts on contact in domestic violence cases (CASC, 2002).⁶

However, problems with family court processes and outcomes in child contact cases where there has been domestic violence persist (Aris et al., 2002; Aris and Harrison, 2007; Humphreys and Thiara, 2002; Hunt and Macleod, 2008; Saunders, 2001; Saunders and Barron, 2003; Thiara and Gill, 2012; Trinder et al., 2009). The

legal presumption of contact was set in *Re O (Contact: Imposition of Conditions)*[1995] where the Appeal Court ruled that contact is "almost always in the child's interest" and this presumption continues to dominate in all but the most exceptional cases. Official government statistics continually show that contact is denied in less than 1% of all contact application cases (DCA, 2004, 2006), with more recent statistics showing this figure to have dropped even lower – in 2010 only 300 contact orders were refused of 95,460 disposals (MoJ, 2011). There are various figures concerning the number of private family law cases involving domestic violence, but there is overwhelming evidence that the incidence of domestic violence in cases that go to court is high (ACOP, 1999; HMICA, 2005; NAPO, 2002).

The reluctance to order no contact, when considered alongside the research evidence regarding the incidence of post-separation violence from fathers to mothers, the impact of domestic violence upon children and the high number of private family law cases involving domestic violence, indicates that further questions need to be asked about potential safeguarding failures with respect to children's contact with violent fathers.

The purpose of this paper is to present and discuss part of the data from a doctoral study which examined the concerns regarding the legal presumption of contact in domestic violence cases. The data presented here is taken from a content analysis of Cafcass s7 reports which examined how and to what extent domestic violence and the representation of children's perspectives in domestic violence cases are included in child welfare reports prepared for the courts by Cafcass CFRs in private family court cases involving domestic violence (in England), and, most importantly, how this impacts on recommendations made to the court.

METHOD

Documentary analysis of 70 Cafcass s7 reports involving domestic violence was undertaken to investigate Cafcass practices within their “own social setting” (Ritchie, 2003: 34), in order to examine actions and perspectives within the context of the agency and wider culture. Reports were sampled over a nine month time period in 2006-2007 from two Cafcass teams in England, using predetermined selection criteria. The two participant Cafcass teams were limited to those who agreed to participate following a nationwide request for participant sites made through Cafcass’ National Office. The lack of positive response to the request is likely to be at least partly due to Cafcass being subjected to repeated inspection and critical scrutiny during the research period. It is suggested that this may have resulted in ‘evaluation fatigue’ within the agency, creating an understandable level of defensiveness from those working ‘at the coalface’. However, the recruitment of two teams provided a large enough sample for the purposes and scope of this study. A third team was recruited as a pilot site and was used to trial selection processes and a content analysis tool. Selection in the pilot team produced a sample of 15 relevant reports to test analytical methods. No data from the pilot team was included in the final analysis.

The two participant Cafcass teams were from different parts of England and represented distinct geographical areas. The first team was based in a large city in the South of England (population of over 400,000), hereafter known as the South Team, and employed FCAs in 23.5 fulltime posts working across public and private law. The second team was based in a significantly smaller English city in the region described previously by Cafcass as ‘Central’ (population of just under 100,000), hereafter known as the Central Team. This team mainly covered a more rural area than the South Team and employed 15 full-time and two part-time FCAs. Typically, the work of CFRs preparing s7 welfare reports in private law cases across both teams involved

meeting with the parties and the children subject to the application, at least once, although frequently more often. Additional information was frequently gathered from other relevant adults or children (for example, family members) and other professionals (for example, social workers, teachers or health professionals) as part of report preparation. Report writing was guided by clear procedures outlining legal duties and included use of a s7 report template. Reports were selected for analysis on the basis that:

- The case had been closed for at least 3 months at the time of analysis, in order to avoid any ethical or practical difficulties associated with accessing the paperwork relating to an open case; but had not been closed longer than twelve months in order to reflect current policies and practices. This provided a nine month time frame in which to sample the reports. The fieldwork was undertaken during 2006-2007;
- The case involved domestic violence. A screening tool was developed and systematically used by the researcher to detect domestic violence in reports written in the chosen time period. This tool was based on an inclusive definition of domestic violence in order to recognise a range of controlling and abusive behaviours as a part of a domestically violent relationship;
- The case involved at least one child aged eight years or over, in order to ensure reports included children who were likely to have been interviewed by a CFR, so that the inclusion of children's perspectives could be analysed. Analysis was undertaken regarding the views of all children subject to proceedings included in reports, regardless of age.

These selection criteria produced a total sample of 70 s7 reports, 48 from the South team and 22 from the Central Team.⁷ Overall, analysis did not focus on a comparison

of the two different samples, largely because there was insufficient data to do this. Furthermore, patterns identified within the profile data were, on the whole, very similar across the two samples. Any specific differences were drawn out and explored in the analysis.

Content analysis was undertaken of all 70 reports in order to capture information such as:

- type of application made;
- who was the applicant;
- language used to describe domestic violence;
- who was alleged to be the main domestic violence perpetrator;
- other violence and child abuse alleged/reported;
- criminal justice system involvement reported;
- any convictions and type of convictions reported;
- involvement of other services associated with child welfare;
- whether a Finding of Fact Hearing had been held or recommended;
- data regarding children involved, including details of Cafcass child interviews;
- data regarding report recommendations.

Reports were systematically examined using a content analysis template, developed through the pilot study, to extract the type of information detailed above, and then organised and analysed using the computer software package Nvivo 7. This analysis provided a profile of cases and was used to identify how and to what extent issues of domestic violence and children's views were presented in reports across the whole sample. Analysis also examined the types of recommendations made to the courts and how these were constructed in relation to information provided about domestic violence, children's views and any risks identified to child safety and welfare in

relation to contact with a violent father. Key findings from the content analysis of reports are presented here.⁸

RESULTS

Profile of Cases

The reports sample consisted of 70 reports written in relation to 70 families and 147 children. Fifty-two reports referred to applications made by fathers (74%), 16 referred to applications made by mothers (23%) and one referred to a step-father's application. In the remaining report no details of the applicant were provided. The majority of applications were made by non-resident fathers in relation to contact, although a notable minority of fathers' applications made were for residence. The trend for applications to be made mainly by non-resident fathers reflects other research findings (Hunt and Macleod, 2008; Smart et al., 2003; Trinder et al., 2005). Mothers' applications were mainly concerned with formalising residence and contact arrangements or varying existing contact orders. Six reports referred to applications made by non-resident fathers to enforce existing contact orders. Contact had been stopped in all of these six cases according to children's wishes and/or because of children's observable distress around contact. In most of these cases children's opposition to contact was respected, although contact was still pursued as a long-term goal through the use of indirect contact to build towards direct contact in the future. In two cases contact was facilitated by Cafcass between fathers and children who had expressed a direct wish for no contact.

Domestic Violence: Who Was Violent to Whom?

Over 50% (n=36) of reports identified fathers alone as the main perpetrator of violence. It is argued below that this figure is likely to be under-representative due to

a tendency to take a gender neutral approach to violence in family court cases (Bancroft and Silverman, 2002).

In 33% of reports the violence was presented as a mutual problem of the parental relationship, where both parents were presented as responsible for reciprocal violence. These reports did not contain sufficient information to establish the nature, context and impacts of the violence. Rather, descriptions tended to be evasive and often conflated terminology relating to domestic violence with descriptions of ‘mutual abuse’ or ‘family violence’. Such descriptions were presented as impartial and without judgement, fulfilling the CFR duty of ‘fairness and equity’ to both parents. However, neutrality in these reports resulted in individual actors becoming invisible, which, in effect, diminished personal responsibility for violent behaviour. Instead, the relationship itself and ‘inter-parental conflict’ became the focus of concern and the site for change, with both parents being held responsible for this.

In 27% of reports information was presented in such a way as to suggest that allegations of domestic violence were not viewed as relevant or not seen as particularly serious because they were historic or because there was felt to be insufficient evidence to corroborate victims’ accounts of violence. In these reports allegations of domestic violence were disregarded or were, again, treated as issues of inter-parental conflict.

Only 12 reports (8%) out of the total sample of 70 contained sufficient information that was presented in such a way as to be able to identify a clear description of systematic gendered abuse. These reports explicitly and consistently identified one parent as being primarily responsible for the violence within a relationship (all fathers party to proceedings), outlined how the father was using violence to control or coerce the mother (Stark, 2007) and acknowledged that this

abuse was having a persistent and negative impact on the children. Most of these reports contained evidence from external sources, such as police reports or health reports regarding physical injury, to substantiate personal accounts of the father's abuse. This is not to suggest that other cases in the sample did not involve systematic, gender based abuse. Rather, that information was presented in *all* but 12 reports in ways that did not explicitly and unmistakably identify gendered patterns of ongoing abuse. Instead, domestic violence was commonly viewed throughout the reports sample as something mutual and/or not relevant to proceedings due to its historic nature or because of a lack of evidence to substantiate women and children's claims.

Only one report stated that a Finding of Fact had taken place, despite *Re LVMH* establishing that allegations of domestic violence should be investigated by way of a Finding of Fact hearing. In this particular case the Judge made 11 findings of domestic violence. Whilst it is not possible to be certain that this meant only one Finding of Fact hearing had taken place across the 70 cases sampled, it can be assumed that if it was not mentioned in the report it is unlikely that it happened.

Criminal Justice System and Social Services Involvement

The majority of reports contained within the sample referred to routine statutory checks undertaken with the police and social services as part of the preparation of s7 reports. Despite the majority of reports being evasive or unclear about fathers' violence and its relevance as a child welfare concern, 60% of reports provided some detail regarding criminal justice system (CJS) involvement with the family as a result of domestic violence. This included:

- the police being called out to domestic violence incidents and taking no further action;
- domestic violence notifications made by the police to social services;

- charges being made as a result of assaults or harassment;
- convictions for crimes related to domestic violence.

A notable minority of such reports provided details of prolific and serious CJS involvement with families due to domestic violence. Some of the violence identified in reports had resulted in criminal convictions. A sizable proportion of the violence discussed did not. This does in no way invalidate accounts of violence though, as most reported domestic violence does not result in conviction. A conviction would only result if the behaviour was deemed a crime, resulting in a charge which the Crown Prosecution Service judged to be worth taking to court and finally that the court agreed a crime had been committed. This is likely for only 4% of all domestic violence incidents recorded by the police (HMIC and HMCPSI, 2004; Hester, 2006; Westmarland and Hester, 2007; Hester et al., 2008). However, despite this, it is important to note that there were a relatively high number of convictions across the sample if compared to the general population for a range of offences.

Notably, twelve fathers held convictions for violence. Six of these fathers were reported to have more than one conviction for violent offences and three possessed five or more convictions for violent offences. Five of these fathers had committed violent offences against female partners. One father was convicted of offences against the person in respect of the children's mother on three separate occasions and had also been convicted twice of assaults against his daughter. This father had also been convicted of breaching a restraining order granted to mother twice. One father was serving an eight year prison sentence for the attempted murder of the mother of his child. This father had applied to the court to have contact with his son on his pending release, despite the boy previously stating adamantly to the courts via Cafcass that he never wanted to see his father again. Another father was convicted

of an assault on the child's mother whilst two others held convictions for physical assaults on previous partners. Convictions for other types of violence were evident in the sample also. One father held 14 convictions for 28 offences, including actual bodily harm to a male social worker, and was also known to have been repeatedly violent to the child's mother, although there were no details of domestic violence related convictions in the report.

Nine of the 12 fathers with criminal records for violent offences were seeking contact with their children, including staying contact in one case. In one of these cases the father had also applied for Parental Responsibility (PR). The remaining three out of the 12 cases in which fathers were identified as having convictions for violence were in relation to:

- A mother's application to the court for Contact and PR Orders held by the father to be rescinded due to his violent behaviour;
- A mother's application for residence of children living with her following an incident where the girls were not returned after contact with their father;
- A father's application for sole residence of his daughter (a shared residence arrangement was in place at the time of the application). In this case 11 findings of fact regarding the father's violence against the child's mother had been made by the court.

It was documented in reports that often police involvement resulted in referrals to social services. Information was provided in 44% of reports regarding both criminal justice system and social services involvement with families. In total, nearly two thirds of the reports sample (61%) included information about some level of social services involvement with families. Reasons for statutory intervention were documented to be various, but frequently domestic violence was named as a key, if

not primary, concern. Level of social services involvement ranged from one police notification resulting in no action to significant and sustained social services intervention, including one case where child welfare concerns, including domestic violence, had resulted in child protection legal proceedings being initiated by the local authority. Several other reports referred to child protection case conferences being held and children's names being put on, what was then called, the Child Protection Register due to child welfare concerns relating to, or including, domestic violence. In four reports domestic violence from male partners (three fathers and one step-father) to mothers was specifically identified as a primary reason for children's names being listed on the Child Protection Register. Other reports included information about social services involvement with children and families as a result of:

- Allegations made against father of physical child abuse;
- Concerns about father's alcohol consumption;
- Concerns about children's behaviour and presentation following contact visits (referrals made by schools in two cases);
- Allegations made by fathers, and in one case a step-father, against mothers in relation to their parenting or care of the children. Investigations found the concerns to be unsubstantiated, probably malicious, in all three of these cases.

Nearly a quarter of reports identified child abuse, past and present, as an issue.

Fathers alone were more likely to be identified as the perpetrator of abuse against a child than anyone else.

Children's Inclusion in Reports

Information regarding 147 children was provided in these reports. All of these children were subject to private family court proceedings at the time the s7 report was written. Demographic information about all the children included in the sampled

reports who were subject to proceedings at the time the report was written was included in the content analysis. The total reports sample comprised of 77 girls (52%) and 70 boys (48%). The majority of children in the sample were aged 10 to under 16 years of age, closely followed by children aged 5 to under 10 years. The vast majority of children across the sample were identified as White British. Religion was not mentioned or was identified as 'not an issue' in almost all the reports. Twenty-four children were identified as having a disability. The majority of these children were described in reports as having learning difficulties, resulting in many cases in a statement of special educational needs. In nine of these cases educational needs were linked to emotional and behavioural difficulties, including attention-deficit hyperactivity disorder (ADHD).

At the time the reports were written 82% of the children lived with their mothers, 17% lived with fathers, one child was subject to shared care arrangements between both parents and one child lived in another country with his step-father. These patterns are generally reflective of other research profiling contact and residence cases (Trinder et al., 2005). Sixty-six children were not having any contact at the time the report was written; 61 children were having regular or fairly regular contact; 16 children were having inconsistent contact; and two children were having indirect contact (telephone contact in one case due to the child living overseas and court ordered indirect contact through the means of written communication in the other). In two reports it was not clear if the children were having contact or not. Of the 66 children who were not having any contact, some had not had any contact for a number of years, some had not had contact for a few months and in some cases contact had only recently ceased.

The vast majority of children represented in the main reports were interviewed at least once by a Cafcass CFR (90%) as part of report preparation and over 50% had been interviewed more than once. Where children were not interviewed legitimate reasons were provided (for example the child was an infant, the child had already been interviewed recently as part of proceedings). Children were interviewed in a variety of locations and were often given the choice whether they wanted to be interviewed alone or not. Most children were interviewed alone. The vast majority of children interviewed were given the opportunity to share their views about residence and/or contact. Furthermore, consideration was given to most children's views to some extent, particularly in the case of older children.

To what extent children's expressed wishes and feelings featured in the concluding assessment and recommendations section of reports, and therefore how influential they appeared to be in respect of recommendations made to the court, presented as being very much determined by the child's age and whether or not the child wanted contact or not. Younger children's voices were much less likely to be incorporated into the wider assessment in a meaningful way and were, therefore, usually absent from recommendations. However, some children were viewed to be of an age where they would 'vote with their feet' and, therefore, recommendations in these cases were more likely to be based on the child's wishes. CFRs rationalised that going against a young person's wishes regarding contact was futile and likely to be unhelpful, if not detrimental, to that young person's welfare. However, in such cases, other welfare concerns identified in reports, such as disclosures regarding a father's violence and/or further evidence of a father's violent behaviour, tended to feature less significantly within recommendations. Practical considerations about 'what will

work' in respect of contact and the child's stated preferences were frequently prioritised over welfare concerns linked to a father's violence.

The privileging of contact was enabled by the common practice of presenting the views of children who wanted contact as unproblematic or outweighing any child welfare concerns. These children's views were routinely used to support contact recommendations, even in cases where the child's account also revealed potential risks relating to a father's violence. However, in cases where the child expressed a wish for no contact this perspective tended to be viewed as problematic and obstructive. The views of these children were seen as needing to be changed in order to 'move the child forward'. Where children were steadfastly opposed to contact, recommendations were frequently made of indirect contact as an interim measure to preserve or re-build the father-child relationship with the view to progressing to direct contact in the future.

Whilst almost all children were asked to provide their wishes and feelings in relation to contact, children did not appear to be routinely asked about their father's violence. Furthermore, as discussed above, children's wishes about contact were much more likely to be determinant factors in relation to contact recommendations than what children disclosed about a father's violence, either as witnesses or as direct victims. Reports tended not to acknowledge or discuss legitimate reasons why children might resist contact, such as self-protection or fear. Rather, discussion focussed on how children might be helped to feel more positively about contact with fathers, often stressing the role of mothers in achieving this.

Report Recommendations

Contact was the most frequent recommendation made in reports (n=28). Contact recommendations included direct (n=12); indirect (n=11); supervised (n=3); and

mixed contact arrangements (n=2 – where it was recommended that different children within the same family have different contact arrangements for the time-being).

A third of reports in which direct contact was recommended also included information regarding both police and social services involvement with families due to domestic violence. Where it was felt that it was not possible to recommend direct contact at that time, indirect contact was more likely to be recommended than supervised contact. Indirect contact was most likely to be recommended instead of direct contact due to children's resistance to contact. In 10 of the 11 reports where indirect contact had been recommended a total of fifteen children voiced their opposition to contact. The children's ages ranged from seven to 16 years. All of these cases involved contact with fathers. The majority of these children referred to father's behaviour or their fear of him as reasons for not wanting to see him. Two younger children (both aged seven years) were also displaying very distressed behaviours at home and at school as a result of contact.

In the majority of reports where indirect contact was recommended direct contact was viewed as 'unachievable', in a practical sense, at the time the report was written, largely because of the child's firm and intractable opposition to it. Overall, direct contact in these 10 reports was described as unworkable and indirect contact recommended instead on the grounds that it would promote an ongoing relationship between child and father and would hopefully lead to direct contact in the future. Mothers were often called upon to support indirect contact as a means to promote the father-child relationship and to build towards direct contact, despite their misgivings or explicit concerns about the impact of this relationship upon their children. A number of these children also expressed a wish for no contact at all because they did not have, or want, a relationship with their father. However, recommendations

commonly included the view that relationships could and should be preserved and that opportunities for future reconciliations should be pursued. Examples of these ‘forward-looking’ recommendations included:

Realistically, I do not see that there is any scope for reintroducing direct contact at the present time. I would support continuing indirect contact as a way of ensuring that the children know, despite their past experiences and misgivings, that their father continues to love them and to keep the door slightly open with a view to the future. I hope mother will actively and positively support this course (report 213).

...an order should allow for Ophelia to resume direct contact at an appropriate time without an order being too prescriptive. In the meantime I recommend that father should have indirect contact via cards/letters and, if possible, mobile ‘phone texting at regular intervals (report 019).

It appears that the best way forward may be that (father) continues to write to Nicholas. In time with the pressure off, I would hope that Nicholas will then want to resume his relationship with his father (report 043).

I am however unable to make a recommendation for direct contact at this time. However, this should not mean the door is closed to future contact. I would suggest that (father) continues to write to Lily and that (mother) encourages Lily to read them and if willing, to reply (report 216).

It is clearly in the interests of ‘the child’ to maintain an open channel of

communication at some level in order to accommodate for child's needs and wishes which may change with time... It is very much to be hoped that sufficient sensitivity can be exercised such that a positive connection can be promoted, rather than lost forever (report 010).

The potential loss of the father-child relationship presented as a mostly unacceptable position throughout these recommendations, with the focus instead being firmly placed on building/re-building this relationship and establishing/re-establishing direct contact for the benefit of the child.

In just one of the 11 reports where indirect contact was recommended were links made relating to how direct contact could pose risks to the children due to father's behaviour. In this report father's drug and alcohol use, which were also linked to his violence, was identified as a risk factor resulting in a recommendation for indirect contact via a family webcam.

Residence Orders were recommended in 14 reports, the majority of which reinforced the existing living arrangements for the child, regardless of the gender of the resident parent. The findings of this study demonstrate general support of fathers' applications for residence (more residence orders were recommended for fathers in this sample than for mothers) even in cases where fathers were found to have been violent. In 10 of the reports which made recommendations for residence, recommendations were also made regarding contact. These included nine recommendations in respect of direct contact and one recommendation for indirect contact. Seven of the reports which made recommendations regarding residence and direct contact recommended that the direct contact include staying contact.

Consideration of a recommendation of no contact was rare. In only two reports were such recommendations made. It was not clear, however, whether the

recommendation conceding no contact in one of these reports related to a No Contact Order or to the court making no order. Overall, contact very much presented as the overriding goal within s7 recommendations made to the court. A strong sense of ‘moving on’ and ‘future-focus’ was identified throughout the reports sample as a means to achieving workable contact for the perceived long-term benefits of children.

DISCUSSION

In summary, content analysis of a sample of Cafcass s7 welfare reports found that a high proportion of reports framed domestic violence as either a mutual problem between parents, therefore locating any welfare concerns within the parental relationship rather than in respect of a father’s violent behaviour, or irrelevant to the current issue of child contact, because the documented abuse had taken place in the past or because there was felt to be insufficient evidence to support the accounts of mothers and children.

How violence is described can have serious consequences for how it is understood and assessed (Bancroft and Silverman, 2002; Dobash and Dobash, 2000; Mirrlees-Black, 1999; Walby and Allen, 2004). Conceptualising domestic violence as a mutual issue within the parental relationship or an irrelevant issue in the past displaces responsibility for the violence and diminishes the significance of fathers’ violence as a child welfare concern. Research has repeatedly demonstrated the gendered nature of domestic violence (for example, Dobash and Dobash, 1992, 2000; Hague and Malos, 1993; Mirrlees-Black, 1999; Nazroo, 1999; Saunders, 1988; Walby and Allen, 2004). Furthermore, research on the family courts has also identified the problem of gender-based violence in private family law cases (Buchanan et al., 2001). Bancroft and Silverman (2002) stress that in their practice experience of family court proceedings truly mutual, un-gendered domestic violence is rare. Consequently,

within the context of other research evidence, the high incidence of what was identified as mutual violence in this reports sample indicates that gender-based violence is likely to have been mistakenly viewed as something mutual and equal, meaning that potential risk factors are likely to have been missed.

The research findings presented here further highlight the importance of being absolutely clear and explicit in court reports about the nature, context and impacts of violence being examined when determining issues of child welfare. It is imperative that CFRs, and other professionals working in private family law, fully understand the dynamics and impacts of gender-based violence and the ongoing impacts this can have on children having contact with violent fathers.

Research has found that allegations of domestic violence tend not to be addressed or taken seriously in family court proceedings if there is no external evidence to substantiate personal accounts (Aris and Harrison, 2007; Trinder et al., 2009). Similarly, this study found that without other evidence to support what women and children said about fathers' violence, descriptions of abuse tended not to be seen as relevant and not taken into account within report recommendations. Where there was external evidence to corroborate allegations of domestic violence, fathers were more likely to be identified as responsible for their violence. However, as discussed below, this still did not impede the pursuit of father-child contact as might have been expected.

Content analysis also identified a high number of cases involving the criminal justice system and/or social services compared to the general population, and an overlap of both being involved in 44% of reports. This finding is indicative that the cases in the study commonly involved families where issues of risk and children's welfare were of paramount concern. Other research which profiled families involved

in private family proceedings also found disproportionately high levels of inter-parental conflict, domestic violence and child protection concerns in residence/contact cases before the family courts (Buchanan et al., 2001; Hunt and Macleod, 2008; Smart et al., 2005; Trinder et al., 2006).

It could be argued from the figures and details concerning CJS and social services involvement that these reports are dealing with the ‘higher end’ of domestic violence in terms of physical abuse and criminal acts. Whilst very much wanting to avoid ‘scaling’ domestic violence or to diminish the impact of sustained emotional abuse, the high level of physical and verbal acts of abuse is a very concerning factor when considering children’s physical safety and wellbeing. Research evidence has demonstrated links between physical domestic violence and physical child maltreatment in around 50% of cases (Hester et al., 2007). Additionally, domestic violence commonly involves a range of abusive behaviours. If physical abuse is present it is very likely that other forms of abuse, not necessarily deemed criminal but nevertheless damaging, will also be used. It is well established by research evidence that psychological, emotional and verbal abuse can have detrimental effects on women and children equal or worse to physical abuse (Dobash and Dobash, 1992; Hague and Malos, 1993; Hester and Radford, 1996). Furthermore, perpetrators of psychological abuse who feel like they have lost power and control have been identified as a particular risk group in respect of potential to commit murder/suicide. Saunders’ (2004) examination of 29 homicides by fathers in child contact cases identified a high level of mental health problems combined with the motivation to exact revenge on a partner who had left the relationship. Therefore, the range of different types of abusive behaviour perpetrated by violent fathers must be considered very carefully when assessing risk in contact cases.

The findings of this content analysis support the notion that Cafcass is committed to meeting with children subject to private family court proceedings and gathering information regarding their wishes and feelings. However, whilst children's views about contact were frequently taken into account, they were viewed and used differently according to whether or not the child wanted or did not want contact. That is, children's stated preferences regarding contact were routinely used to support contact recommendations or were perceived as problematic and in need of being changed if the child opposed contact. Furthermore, a child's stated preference about contact was more likely to be influential in relation to report recommendations than any disclosures made about a father's violence, which tended to disappear from the recommendations section of reports. Children's disclosures about violence did not appear, in the main, to be treated as legitimate evidence of child welfare concerns, or as valuable contributors to a risk assessment process. If accounts of a father's violence were afforded any legitimacy, the importance of preserving father-child relationships or promoting future, more positive relationships tended to be prioritised over current or potential risks. The loss of the father-child relationship, or acceptance that such a relationship was not in the child's best interests at that time, presented as wholly undesirable, unacceptable even, across the reports sample.

Finally, content analysis identified that recommendations were nearly always made for contact or to promote contact for the future. This was persistently the case even when the report also contained clear evidence of a father's violence, welfare risks to child(ren) and/or their mother or children's expressed fears about having contact with a violent father. Contact was framed as inevitable and desirable in almost all cases. Risks and safeguarding issues associated with contact were not, on the whole, fully addressed. Rather, preserving family relationships presented as a

stronger motivating factor even in cases where it was conceded that direct contact was not possible at that time. In such cases, indirect contact was recommended in order to protect some sense of relationship and to promote the strengthening of relationships with view to the future establishment of direct contact. In particular, this strong sense of family preservation highlighted a focus on shared parenting and equalising parental involvement as important to children's wellbeing, security and development (Smart and Neale, 1999). A prevalent sense that some father presence, despite his behaviour and the impact of this on the children, is better than no father presence in a child's life was identified throughout the reports sample. This is in contrast to Pryor and Rodger's famous assertion, based on their empirical research of children's lives post parental separation, that the "mere presence of fathers in children's lives is not enough" to promote children's wellbeing (Pryor and Rodgers, 2001:3). Conversely, the research presented here found a pervasive sense of optimism in relation to future contact was regularly conveyed without reference to safeguarding concerns or practical risk management strategies.

Research undertaken by Smart and colleagues for the DCA (2003) found that whilst interim orders restricting contact were in place in relation to a quarter of fathers' contact applications, only 10% of final orders confirmed these arrangements. Instead, the most common outcome was direct, unsupervised contact. Similarly, Hunt and Macleod's (2008) examination of court outcomes found that the majority of contact applications involving welfare concerns ended with unsupervised, direct contact. In this context, it cannot be assumed that a recommendation of indirect contact is in the child's best interest, short or long-term, or guaranteed to keep the child safe, now or in the future. A sense of promoting agreement between parents was also evident in recommendations where this was perceived to be possible. Linked to

this, a sense that ‘time heals’ and that decision-making should be ‘future-focused’ was identified; that is, that the problems of the past must be overcome and left behind in order to look towards a more harmonious and conflict-free future. Where some consideration of safety issues was acknowledged in relation to contact with a violent father, practical measures to protect women and children were glaringly absent from recommendations. Furthermore, mothers were often requested to negotiate, support or encourage contact arrangements despite their legitimate concerns regarding safety for their children and themselves.

The findings presented in this article are based on a content analysis of a relatively small sample of Cafcass reports selected from two Cafcass teams. Inevitably, there are a number of limitations associated with this methodology, starting with the limits of generalizability when using a small sample. In addition to this, only court reports were analysed in this study. It is possible that individual reports examined may not have contained full information about cases, which may (or may not) have been produced in other sources of data. Level of detail varied substantially between reports and some reports alluded to more detailed information contained elsewhere, such as previous reports or other court documentation. Furthermore, variation between different CFRs report-writing styles may have resulted in inconsistencies in the type of information included in reports and, particularly, in the way it was presented. Therefore, the limitations of not having access to other sources of information to verify or complement the information provided in reports must be acknowledged. It is further recognised that triangulation of the data through the use of other methodologies to complement the documentary analysis, such as practitioner interviews, could have benefited the research. However, this study was deliberately intended to be an in-depth examination of the content of

and discursive practices used in Cafcass s7 reports, as the primary tool of communication between Cafcass CFRs and the courts. As such, this study does not attempt to provide statistical generalizability, but rather, the aim of this type of research is to “generalise to theory rather than to populations” (Bryman, 2008: 391-392) and to provide an in-depth understanding of complex issues. Notwithstanding the limitations outlined, it is argued that this study has made important findings in respect of this aim; specifically in relation to the types of recommendations made in domestic violence cases in private family court proceedings and the ways in which these recommendations are constructed and presented to the courts. Furthermore, these findings fit within and contribute to a wider body of research evidence concerning the problems with domestic violence, child contact and the family courts.

To conclude, the research findings presented and discussed in this article support a persistent argument: despite policy developments, practice directives and improved professional knowledge, in practice the presumption of contact continues to usurp this knowledge in all but exceptional cases. Therefore, whilst some progress related to recognition and understanding of domestic violence has undoubtedly been made, the unrelenting influence of deeply embedded ideologies regarding relationships with fathers continues to have the effect of marginalising issues of safeguarding in the majority of cases. Unless there is a cultural shift from seeking to promote ‘contact at all costs’ to only pursuing contact that is ‘safe and positive for the child’ (Hunter and Barnett, 2013), policy guidance and practice directions alone cannot effectively ensure safe practice in child contact cases.

NOTES

1 Although according to Stanley et al. (2010) increased police notifications of domestic violence have not produced consistently effective responses, due to some child protection services being overwhelmed with the volume of notifications and experiencing difficulties in identifying, prioritising and therefore responding satisfactorily to risk.

2 The Children and Family Court Advisory and Support Service (Cafcass) was created in 2001 under the provisions of the Criminal Justice and Court Service Act 2000. It is a non-departmental public body independent of the courts, social services, education and health, accountable to the Secretary of State for Education. The primary aim of this service is to safeguard and promote the welfare of children subject to family court proceedings, both in private and public law, and to represent the voice of the child. Cafcass Family Court Advisors (FCAs) are all qualified social workers. Within the private law arena, the majority of Cafcass' work involves the preparation of s7 (Children Act 1989) welfare reports for the courts in contested contact and residence applications. When dealing with matters of private law, Cafcass FCAs are known as Children and Family Reporters (CFRs).

3 Under section 1(3) of the Children Act 1989 when considering any question of a child's upbringing the court must have regard in particular to:

1. the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
2. his physical, emotional and educational needs;
3. the likely effect of any change in his circumstances;
4. his age, sex, background and any characteristics of his which the court considers relevant;

5. any harm which he has suffered or is at risk of suffering;
6. how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
7. the range of powers available to the court under this Act in the proceedings in question.

This is known as the Welfare Checklist.

4 See *Re. L (A Child) (Contact: Domestic Violence)*; *Re V (A Child) (Contact: Domestic Violence)*; *Re M (A Child) (Contact: Domestic Violence)* and *Re H (Children) (Contact: Domestic Violence)* [2000] 2 FLR 334.

5 Sturge and Glaser were requested by the UK's official solicitor to produce an expert report giving a child psychiatric opinion on the implications of domestic violence for child contact. The report was accepted by the Court of Appeal in its entirety and informed its judgement. The report was subsequently published in the Family Law journal in September 2000.

6 *The Guidelines for Good Practice on Parental Contact in Cases Where There is Domestic Violence* were issued in 2002 and were extracted from section five of the CASC report (2000).

7 Addendum reports which met the selection criteria were excluded from the sample due to lack of detail in these reports and to avoid duplication of data.

8 Critical Discourse Analysis was also undertaken of a small subsample of six reports, in order to thoroughly examine the discursive practices at work in the construction of reports. The findings of the Critical Discourse Analysis are not discussed in detail in this article.

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